

## **REMARKS/ARGUMENTS**

Claims 78-80 are pending in the present application. No claims were canceled; claims 78-80 were amended; and no claims were added.

Support for the amendments is found in the specification and drawings as follows: figure 1, 106; [0010], line 1; [0043], and lines 3-8 and 13-16.

Reconsideration of the claims is respectfully requested.

### **I. Examiner Interview**

On February 24, 2010, a telephonic interview was conducted with Examiner Colbert. The 35 U.S.C. § 101, 35 U.S.C. § 112, first paragraph and the 35 U.S.C. § 112, second paragraph rejections were discussed in light of proposed amendments. The following agreements were reached. The proposed amendments overcame the 35 U.S.C. § 101 and the 35 U.S.C. § 112, first paragraph. In regard to the 35 U.S.C. § 112, second paragraph rejections, an agreement was reached that further amendments discussed with the Examiner would overcome the rejections. Applicants have made those amendments. Applicants pointed out that certain rejections addressed limitations not in the claims and these elements had been deleted by prior amendments. For example, a rule does not appear in the claims. During the interview, the Examiner raised a new objection to claim 79 in which the Examiner objected to the number of wherein clauses, and agreed that if claim 79 were amended to conform to claim 78, the objection would be overcome. Applicants have amended claim 78 to overcome the objections.

Finally, the Examiner agreed that if the amended claims did not result in an allowance, she would call Applicants' attorney to discuss any such remaining issue and attempt to resolve such an issue, if any, by Examiner's Amendment.

Applicants thank the Examiner for the courtesy extended to Applicants' attorney in the interview.

## **II. 35 U.S.C. § 101**

The Examiner has rejected claim 78 under 35 U.S.C. § 101 as being directed towards non-statutory subject matter. Final Office Action dated November 25, 2009, pp. 2-3.

In rejecting claim 78, Examiner states:

Based on Supreme Court precedent a method claim must (1) be tied to another statutory class of invention (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing (see at least *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780,787-88 (1876)). A method claim that fails to meet one of the above requirements is not in compliance with the statutory requirements of 35 U.S.C. 101 for patent eligible subject matter. Here claims XXXX fail to meet the above requirements since there is not a sufficient tie to another statutory class.

Claim 78 is non-statutory under 35 USC 101 because "an agent" and "processing engine" are interpreted as software per se and not a machine or apparatus.

Final Office Action dated November 25, 2009, pp. 2-3.

Claim 78 has been amended to recite "processor" in place of the agent and the processing engine. Support for the amendment is found in figure 1, 106 and [0043], lines 13-16.

Applicants submit that the 35 U.S.C. § 101 rejection has been overcome.

## **III. 35 U.S.C. § 112, First Paragraph**

The Examiner has objected to the specification under 35 U.S.C. § 112, first paragraph, as failing to adequately teach how to make and/or use the invention in claims 78-80. Additionally, the Examiner rejected the claims under the same reasons. Final Office Action dated November 25, 2009, p. 3.

In objecting to the specification, the Examiner states:

Claims 78-80 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 78 recites "agent", "computer service resource" and "processing engine" which are not found in the Specification. Claims 79 and 80 have a similar issue.

The specification references consuming "pay-per-use" of equipment under lease via a unit of measure (pg. 8) and only references equipment usage throughout the specification without mentioning any specific equipment."

Final Office Action dated November 25, 2009, p. 3.

Claims 78-80 have been amended to remove the terms "agent" and "processing engine." Support for the amendments is found in figure 1, 106 and [0043], lines 13-16. Further, "computer service resource" has been amended to --computer resource--.

Therefore, the objection of the specification under 35 U.S.C. § 112, first paragraph has been overcome.

#### **IV. 35 U.S.C. § 112, Second Paragraph**

The Examiner has rejected claim 78 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter, which applicants regard as the invention. Final Office Action dated November 25, 2009, p. 3-5.

In rejecting claims 78, the Examiner states:

Claim 78 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear how the rule is obtained for the plurality of records and a calculation is performed using the rule for the plurality of records because there has not been anything prior to what would cause one to obtain a rule for the plurality of records or perform a calculation using the rule for the plurality of records. If the usage data is processed into a record it is unclear how the processing takes place prior to the record being saved into a record table, etc.

It is vague and indefinite how the determination is made for a particular unit of work's status changes to a closed status. Is this determination based on the saving of the record in the record table, etc.?

The last claim limitation recites "storing the metric with the records". It is vague and indefinite what metric is being stored with the records. Do Applicants' mean the consumption of the resource for the [particular] unit of Work?

It is vague and indefinite whether a person or a computer or some device is "gathering a plurality of usage data" and "processing the usage data". It is also vague and indefinite how the determining when a [particular] unit of work's status changes to a closed state" and what is responsive to the [particular] unit of work's status changing to the closed status". Is a person or a machine or device making this determination and being responsive to the particular unit of work's status change?

How is a rule obtained when there is nothing related to a rule relating to the records prior to this claim limitation? Is this rule a business rule or an attribute rule or a database rule?

How is the calculating using the rule performed for each of the records? Is the calculation based on the consumption of the resource for the [particular] unit of work? Is the calculating performed by a person or a computer?

Claim 78 also recites "using the same schema". It is vague and unclear what same schema is being used.

It is unclear what makes a "unit of work" a "particular unit of work" as opposed to any other "unit of work".

"An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed ... ". *In re Zietz* 13 USPQ2d 1320 (Fed. Cir. 1989).

Final Office Action dated November 25, 2009, p. 3-5.

Amended claim 78 recites:

A computer implemented method, comprising:

gathering, by a processor of a computer, a plurality of usage data from a plurality of users consuming a plurality of computer resources in an on demand service environment, the on demand service environment providing a plurality of computer services available through a web service interface, wherein the processor is connected to the plurality of users and the web services interface by a network, and wherein each of the plurality of usage data measures a consumption of a computer resource in one of the plurality of computer services;

sending, by the processor, the plurality of usage data to a database through the web services interface;

processing, by the processor, the plurality of usage data into a plurality of records, each of the plurality of records having a required information section and an attributes section;

saving, by the processor, the plurality of records into a record table, an attribute table, and a unit of work table, wherein the record table is linked to the attribute table, and the record table is linked to the unit of work table;

responsive to a flag in a required field of a record, changing a status of a the unit of work to a closed status in the unit of work table, and responsive to changing the status of the unit of work to the closed status in the unit of work table, identifying a plurality of associated records, wherein an associated record is a record associated with the unit of work;

aggregating, normalizing, and algebraically composing, by the processor, the plurality of associated records to produce a metric that summarizes a consumption of the computer resource for the unit of work; and

storing, by the processor, the metric with the records in a database, wherein the metric and the records are configured to be stored and retrieved using a schema, and wherein the metric is configured to be used in an accounting, an auditing, a billing, or an optimization process.

The Examiner stated:

It is unclear how the rule is obtained for the plurality of records and a calculation is performed using the rule for the plurality of records because there has not been anything prior to what would cause one to obtain a rule for the plurality of records or perform a calculation using the rule for the plurality of records. If the usage data is processed into a record it is unclear how the processing takes place prior to the record being saved into a record table, etc.

Applicants submit that the element containing a rule was deleted by amendment in a prior office action. Therefore, the Examiner's argument is moot.

In regard to the Examiner's argument that "[i]t is vague and indefinite how the determination is made for a particular unit of work's status changes to a closed status" and the Examiner's question "[i]s this determination based on the saving of the record in the record table...", Applicants have amended each claim to recite "responsive to a flag in a required field of a record, changing a status of the unit of work to a closed status in the unit of work table, and responsive to changing the status of the unit of work to the closed status in the unit of work table, identifying a plurality of associated records, wherein an associated record is a record associated with the unit of work." As discussed in the interview, the claim element conforms to the Examiner's statement of allowable subject matter, and the unit of work's status is changed to a closed status in response to the flag in a required field of a record.

In regard to the Examiner's statements that "[t]he last claim limitation recites 'storing the metric with the records'" and "[i]t is vague and indefinite what metric is being stored with the records" and the Examiner's question "[d]o Applicants' mean the consumption of the resource for the [particular] unit of Work," Applicants have amended each claim to recite "a metric that summarizes a consumption of the computer resource for the unit of work." Therefore, Applicants mean the consumption of the resource for the unit of work. The metric being stored is the metric previously identified as "a metric".

In regard to the Examiner's statement "[i]t is vague and indefinite whether a person or a computer or some device is 'gathering a plurality of usage data' and 'processing the usage data,'" Applicants submit that the amendment to recite a processor overcomes this rejection.

In regard to the Examiner's statement "[i]t is also vague and indefinite how the determining when a [particular] unit of work's status changes to a closed state" and the Examiner's question "what is responsive to the [particular] unit of work's status changing to the

closed status” – “[i]s a person or a machine or device making this determination and being responsive to the particular unit of work's status change,” Applicants submit that the processor is making this determination based on the instruction as set forth in the claim.

In regard to the Examiner’s question “[h]ow is a rule obtained when there is nothing related to a rule relating to the records prior to this claim limitation” and [i]s this rule a business rule or an attribute rule or a database rule,” Applicants submit that this is a moot issue as the element referred to was deleted by amendment in the preceding office action.

In regard to the Examiner’s questions “[h]ow is the calculating using the rule performed for each of the records”, “[i]s the calculation based on the consumption of the resource for the [particular] unit of work”, “[i]s the calculating performed by a person or a computer,” Applicants submit that the issue is moot as the calculating step was deleted by amendment in a prior office action.

In regard to the Examiner’s statements “[c]laim 78 also recites “using the same schema” and “[i]t is vague and unclear what same schema is being used,” Applicants submit that the amendment to change “the same schema” to --a schema-- overcomes the objection.

In regard to the Examiner’s statements “[i]t is unclear what makes a “unit of work” a “particular unit of work” as opposed to any other “unit of work,” Applicants submit that this rejection has been overcome by amendment to change “particular work” to --work--.

Therefore, the rejection of claim 78 under 35 U.S.C. § 112, second paragraph has been overcome.

**V. Allowable Subject Matter**

The Examiner has rejected claims 78-80 under the cited statutes but has stated claims 78-80 would be allowed if the rejections as given above were overcome. Final Office Action dated November 25, 2009, p. 5-6.

The Examiner states:

The following is a statement of reasons for the indication of allowable subject matter: a flag in a required field of a record changing [by a processing engine] a status of a [particular] unit of work to a closed status in the unit of work table and responsive to changing the status of the [particular] unit of work to the closed status in the unit of work table, identifying [by the processing engine] a plurality of associated records, wherein an associated record is a record associated with a unit of work.

Final Office Action dated November 25, 2009, p. 5-6.

Applicants have amended the claims to conform to the Examiner's statement of allowable subject matter. Applicants submit that the scope of the claim has not been changed.

Therefore, the rejection of claims 78-80 under the cited statutes has been overcome.

**VI. Conclusion**

It is respectfully urged that the subject application is now in condition for allowance.

The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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Respectfully submitted,

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